20-650 Dec. 17. 1874

R. Judge

Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~530~~ ~~581~~ 74 13

CORNELIUS CADLE, JR., AS RECEIVER OF THE FIRST NATIONAL BANK OF SELMA, PLAINTIFF IN ERROR,

vs.

GEORGE BAKER AND JOSEPH L. PERKINS, AS GEORGE BAKER & COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED DECEMBER 12, 1871.

Oct. Term 1874

Pinkney &c.

vs

Maryland

20 Howard 213

&c Protest

In Error

Mathews

vs

Mc Stre

Saturday

A. Norbeck

In Error

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the district court of the United States for the middle district of Alabama, greeting:

Because the records and proceedings, and also in the rendition of the judgment of a plea which is in the said district court before you, between Cornelius Cadle, j'r, as receiver of the First National Bank of Selma, and George O. Baker and Joseph L. Perkins, parties in trade, using the firm-name of George O. Baker & Co., a manifest error hath happened to the great damage of the said Cornelius Cadle, j'r, as receiver of the First National Bank of Selma, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day of December next in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the fifth day of December, in the year of our Lord one thousand eight hundred and seventy.

Attestation:

SEAL U. S. DIS'T COURT MID. DIS'T ALA.

E. C. V. BLAKE,
Clerk U. S. Dis't Court,
Middle District Alabama.

(Endorsed:) Original writ of error. Filed Nov. 3d, 1871. E. C. V. Blake, clerk.

Citation.

UNITED STATES OF AMERICA, *ss:*

To George O. Baker and Joseph L. Perkins, partners in trade, using the firm name and style of George O. Baker & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the middle district of Alabama, wherein Cornelius Cadle, j'r, as receiver of the First National Bank of Selma, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard Busteed, judge of the United States district court for the district of Alabama, this the second day of
3 December, 1871.

RICHARD BUSTEED,
United States District Judge for the State of Alabama.

(Endorsed:) Received in office this the 2d day of December, A. D. 1871.
E. C. V. BLAKE,
Clerk U. S. Dis't Court, Mid. Dis't of Alabama.

Original citation received in office Dec. 2, 1871.
R. W. HEALY,
U. S. Marshal.

I hereby specially depute Henry Cochran to serve the within citation.
R. W. HEALY,
U. S. Marshal.

Service of citation.

Executed the within citation by delivering a copy of the same personally to William M. Brooks, the attorney of record of George O. Baker & Co.
HENRY COCHRAN,
United States Special Deputy Marshal.
December 2d, 1871.

Henry Cochran being duly sworn, deposeth and saith that, on the 2d day of December, 1871, at Selma, Alabama, he executed the within citition by delivering a copy of the same to William M. Brooks, the attorney of record of George O. Baker & Co.
HENRY COCHRAN.

Sworn to & subscribed before me at Montgomery, this 4th day of December, A. D. 1871.
GEO. H. PATRICK,
U. S. Commissioner Mid Dis't Ala.

4 *Bond for costs of appeal.*

Supreme Court of the United States.

CORNELIUS CADLE, J'R, AS RECEIVER OF THE First National Bank of Selma,
vs.
GEORGE O. BAKER AND JOSEPH L. PERKINS, partners in trade using the firm name of George O. Baker & Co.

Know all men by these presents that we Cornelius Cadle, j'r, George J. Marlowe, j'r, and Henry Cochran, of Selma, Alabama, are held and firmly bound unto George O. Baker & Co., of Selma, Alabama, in the sum of three hundred dollars to be paid to the said George O. Baker & Co., their executors or administrators, to which payment, well and truly to be made we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated the second day of December, A. D. 1871.

Whereas the above-named Cornelius Cadle, j'r, as receiver of the First National Bank of Selma, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered

in the above-entitled action by the United States district court for the middle district of Alabama:

Now, therefore, the condition of this obligation is such, that if the above-named Cornelius Cadle, j'r, as receiver of the First National Bank of Selma, shall prosecute his said writ of error to effect, and answer all costs, if he fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

C. CADLE, J'R. [L. S.]
GEO. F. MARLOWE, J'R. [L. S.]
HENRY COCHRAN. [L. S.]

Sealed and delivered in the presence of—
W. J. GREENE.
H. S. D. MALLORY.

Approved by—

RICHARD BUSTEED,
United States District Judge for Alabama.

(Endorsed:) Bond for cost. Filed Dec. 2d, 1871. E. C. V. Blake, clerk.

Declaration.

UNITED STATES OF AMERICA:

District court of the United States for the middle district of Alabama. November term, 1867.

CORNELIUS CADLE, JR., RECEIVER OF THE First National Bank of Selma, a body corporate for carrying on the business of banking under the laws of the United States, plaintiff,

vs.

GEORGE O. BAKER AND JOSEPH L. PERKINS, partners in trade under the firm-name of George O. Baker & Co.

The plaintiff, as receiver of the First National Bank of Selma, claims of the defendant twenty hundred and forty-two $\frac{28}{100}$ dollars, due on a bill of exchange drawn by them on the 13th day of March, 1867, on Baker, Graham & Co., for the payment of twenty hundred and forty-two $\frac{28}{100}$ dollars to the order of themselves, at the First National Bank of Mobile. Said bill was endorsed to the First National Bank of
6 Selma, and, not being paid at maturity, was duly protested, of which the defendant had due notice. The said bill, with the damages and interest thereon, is still unpaid, and is assets of the First National Bank of Selma.

And the said plaintiff avers that the said the First National Bank of Selma was, at the time the indebtedness above mentioned accrued to it, as aforesaid, a corporation formed and organized under the act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," passed the 3d day of June, 1864.

And said plaintiff further avers that, by reason of the violation of the provisions of said act on the part of the directors of said banking association, proceedings were instituted against it in this court, held for the middle district of Alabama at a term of said district court commencing on the 4th Monday of May, 1867, at the instance and in the name of H. R. Hulburd, then the Comptroller of the Currency of the United States, for the purpose of having a judicial ascertainment by said court of certain alleged violations of said act of Congress by the directors of said association, which association was then located at Selma, in Dallas County, Alabama, and within the jurisdiction of this court; that such proceedings were thereupon had, upon reasonable notice to said banking association of the nature and pendency of said proceeding, that, on the first day of June, A. D. 1867, by the judgment and determination of this court the said association had violated the provisions of the said act of Congress, and thereupon the court ad-
7 judged and decreed that said banking association had forfeited all its rights, privileges, and franchise derived from said act of Congress, and declared the same dissolved. All which will appear by the record of the proceeding in said cause now in this court, and to which reference is now here made.

And the said plaintiff avers that the said Hulburd, then being the Comptroller of the Currency as aforesaid, to wit, at the city of Washington, in the District of Columbia, on, to wit, the 30th day of May, 1867, becoming satisfied, as specified in the aforesaid act of Congress that said banking association had refused to pay its circulating notes, and having, with the concurrence of the Secretary of the Treasury of the United States, appointed an agent (of whose appointment immediate notice was given to said banking association) to ascertain whether said association had refused to pay its circulating notes in lawful money of the United States when demanded, and to report to the Comptroller the facts so ascertained, and the agent aforesaid having made his aforesaid report to the said Comptroller of the Currency of the United States, to wit, on the 30th day of May, A. D. 1867, that the said banking association had refused to pay its circulating notes in lawful money of the United States when demanded, the said Comptroller of the Currency at the city of Washington aforesaid, on the day and year last aforesaid, did appoint the plaintiff a receiver, as provided by the fifth section of said act, and require of him bond and security in the sum of twenty thousand dollars, with power, under the direction of said Comptroller, among other things, to take possession of the books,
8 records, and assets of every description of said association and to collect all debts, dues, and claims belonging to said association, as by said act is provided.

And plaintiff further avers that he executed said bond with good security in the said sum as required by the said Comptroller, and thereupon received from said Comptroller of the Currency a commission under his official seal, as receiver aforesaid, which commission is now here to the court shown, and the said plaintiff then and there entered upon the duties of his office as such receiver, to all of which the said defendant had due notice before the commencement of this suit. And thereupon the plaintiff avers that an action has accrued to him, as such receiver, to have and recover of and from the said defendant the said sum above demanded. Yet the said defendant, although said demand has long since been due and remains wholly unpaid, and, although often requested to pay the same, hitherto and still does wholly neglect to pay

the same, to the damage of said plaintiff, as receiver as aforesaid, of twenty thousand dollars. Hence he sues.

E. BUGBEE, *U. S. Dist. Att'y.*
J. C. COMPTON,
CHILTON & THORINGTON,
Attorneys for Plaintiff.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
Washington, D. C., April 30th, 1867.

Whereas, on the 23d day of April, 1867, John Hopley, examiner of national banks, and special agent of the Comptroller of the
9 Currency, did present at the counter of "The First National Bank of Selma," a national association formed pursuant to the laws of the United States, and located at Selma, Alabama, a five-dollar circulating note, issued by said association, and did then and there demand payment thereof in lawful money of the United States, and payment of said note was refused;

And whereas C. B. Woods, esquire, the cashier of said association, did then and there offer to waive demand and notice of protest, and, in pursuance of said offer, did make, sign, and deliver to the said Hopley an admission in writing, stating the time of the demand, the amount demanded, and the fact of the non-payment;

And whereas I am satisfied from the admission in writing aforesaid, and from the report of said special agent, appointed to ascertain whether said association has failed to redeem its circulating notes, that the said association has failed to redeem in lawful money of the United States, its circulating notes, when payment thereof was legally demanded during the usual hours of business, at the office of the said association, and is in default: Now, therefore, I, Hiland R. Hulburd, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, do hereby appoint Cornelius Cadle, jr., of Muscatine, Iowa, a receiver for the First National Bank of Selma, with all the powers, duties, and responsibilities given to, or imposed upon a receiver under the provisions of the act entitled "An act to provide a national cur-
10 rency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof."

Approved, June 3d, 1864.

In witness whereof, I have hereto subscribed my name, and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year first above written.

SEAL OF OFFICE, COMPTROLLER OF THE CURRENCY.

HILAND R. HULBURD,
Comptroller of the Currency.

This commission is attached to the complaint by order of the court.
J. P. SOUTHWORTH,
U. S. Dist. Att'y.

Summons.

UNITED STATES OF AMERICA:

District court of the United States for the middle district of Alabama.

The President of the United States of America, to the marshal of said district, greeting:

You are hereby commanded to summon George O. Baker and Joseph L. Perkins, partners in trade under the firm-name of George O. Baker &

Co., who are citizens of the State of Alabama, to appear before the honorable, the district court aforesaid, at the place of holding said court at Montgomery on the fourth Monday of November next, to answer the complaint of Cornelius Cadle, jr., receiver of the First National Bank of Selma, a body corporate, formed for carrying on the business of
11 banking under the laws of the United States. And have you then and there this writ.

Witness the Honorable Richard Busteed, judge of the said court, the fourth Monday of May, in the year of our Lord one thousand eight hundred and sixty-seven.

Issued the first day of November in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL DISTRICT COURT.] Attest:

E. N. BLAKE,
Clerk D. C. Middle District of Alabama.

(Endorsed:) We acknowledge due and legal service of the within writ, waive copy, and consent that the cause may stand for trial at the November term, 1867, of the United States district court.

GEORGE O. BAKER & CO.

Demurrer to declaration.

District court of the United States for the middle district of Alabama.
May term, 1870.

CORNELIUS CADLE, JR., RECEIVER OF THE First National Bank of Selma
vs.
GEORGE O. BAKER & CO.

And the said defendants, by W. M. Brooks, their attorney, come and defend the wrong and injury, when, &c., and say that the said declaration and the matters and things therein contained in manner and form as the same are abo'e stated and set forth are not sufficient in law for
12 *for* the said plaintiff to have, or maintain his aforesaid action thereof against the said defendants, and they the said defendants are not bound by law to answer the same, and this they are ready to verify. Wherefore, by reason of the insufficiency of the said declaration the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against them, and the said defendants state and show to the court here the following causes of demurrer, that is to say:

First. That it is not shown in said declaration, that the said National Bank failed to redeem any of its circulating notes, on the lawful demand of payment thereof during the usual hours of business at the office of said bank, or at its place of redemption, and that thereupon the holder of said notes caused the same to be protested by a notary public, or that the cashier or president of said bank offered to waive demand and notice of the protest, and admitted, in writing, the time of the demand, the amount demanded, and the fact of the non-payment, and it does not appear that either such admission or notice of protest was forwarded to the Comptroller of the Currency.

Second. It does not appear that the Comptroller of the Currency received notice that said bank failed to redeem any of its circulating notes as specified in the forty-sixth section of the act of Congress in the declaration mentioned.

Third. It does not appear that any of the circulating notes of
13 said bank were presented, and payment thereof lawfully demanded.

Fourth. It does not appear that any of the circulating notes of said bank were protested for non-payment.

Fifth. It does not appear that any special agent, appointed by the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, ascertained that said bank refused to pay its circulating notes when demanded, as provided in the forty-sixth section of said act.

Sixth. It does not appear that the Comptroller of the Currency had any authority to appoint said Cadle receiver of said bank.

Seventh. It appears that the appointment of said Cadle as receiver of said bank is void.

Eighth. It does not appear that the Comptroller of the Currency was satisfied, before or at the time of the alleged appointment of said receiver, that said bank had refused to pay its notes, as in said act is provided, and was in default.

Ninth. It does not appear that the Comptroller of the Currency appointed any agent to ascertain whether said bank had refused to pay its circulating notes, when demanded during the usual hours of business, at the office of said bank, or at its place of redemption.

Tenth. It does not appear that any agent appointed by the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, reported to the said Comptroller, that he, the said
14 agent, had ascertained that said bank had failed to pay its circulating notes on any lawful demand thereof by the holder, and that the same were protested by a notary public, for non-payment, or that the president or cashier of said bank signed and delivered an admission in writing, stating the time of demand, the amount demanded, and the fact of the non-payment thereof; ahd that the declaration is uncertain, informal, and insufficient.

W. M. BROOKS,
Att'y for Defendants.

(Endorsed:) Filed June 2d, 1870. E. C. V. Blake, clerk.

And now comes the said plaintiff and joins in demurrer.

J. P. SOUTHWORTH, *U.S. Att'y.*
CHILTON & THORINGTON.
J. C. COMPTON.

Caption of term.

At a district court of the United States for the middle district of Alabama, begun and held at Montgomery, Alabama, on the 23d day of May, A. D. 1870.

Present, the Hon. Richard Busteed, judge of said court.

Judgment entry.

CORNELIUS CADLE, JR., RECEIVER OF THE First National Bank of Selma,
vs.
GEORGE O. BAKER & CO.

JUNE 2D, 1872.

15 Came the parties, by attorneys, and argued the demurrer to the declarations. Whereupon it is considered by the court that

the demurrer be sustained, and that the defendants go hence, and recover of the plaintiffs the costs of this suit.

RICHARD BUSTEED, *Judge.*

Bill of exceptions.

UNITED STATES OF AMERICA:

District court of the United States for the middle district of Alabama. May term, 1870.

CORNELIUS CADLE, JR., WHO SUES AS RECEIVER of the First National Bank of Selma, plaintiff,
vs.
GEORGE O. BAKER & CO., DEFENDANT.

Be it remembered that the above-entitled cause came on to be heard on the 2d day of June, 1870, before the Hon. Richard Busteed, judge of the said district court, and upon the call of said cause for trial, the court enquired of the plaintiff whether he had in court the commission issued to him by the Comptroller of the Currency, commissioning him, the said Cadle, as receiver of the First National Bank of Selma, being the same commission mentioned in the plaintiff's complaint, as "now, here to the court shown." The plaintiff replied that he had the
16 commission, and, on request of the court, produced it. Ther'upon the court ordered that a copy of said commission be filed with the complaint in this cause, in the court, to which order of the court the plaintiff excepted. The commission was thereupon filed and reads as follows:

TREASURY DERARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
Washington, D. C., April 30th, 1867.

Whereas, on the 23d day of April, 1867, John Hopley, examiner of national banks, and special agent of the Comptroller of the Currency, did present at the counter of "The First National Bank of Selma" a national association formed pursuant to the laws of the United States, and located at Selma, Alabama, a five-dollar circulating note issued by said association, and did then and there demand payment thereof in lawful money of the United States, and payment of said note was refused;

And whereas C. B. Woods, esq., the cashier of said association, did then and there offer to waive demand and notice of protest, and, in pursuance of said order, did make, sign, and deliver to the said Hopley an admission in writing, stating the time of demand, the amount demanded, and the fact of the non-payment;

And whereas I am satisfied, from the admission in writing aforesaid, and from the report of said special agent appointed to ascertain whether said association has failed to redeem its circulating notes, that the
17 said association has failed to redeem, in lawful money of the United States, its circulating notes, when payment thereof was legally demanded, during the usual hours of business, at the office of said association, and is in default:

Now, therefore, I, Hiland R. Hurlburd, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, do hereby appoint Cornelius Cadle, jr., of Muscatine, Iowa, a receiver for "The

First National Bank of Selma," with all the powers, duties, and responsibilities given to or imposed upon a receiver, under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864.

In witness whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.]

HILAND R. HULBURD,
Comptroller of the Currency.

And thereupon the defendant filed his demurrer, and the plaintiff joined in said demurrer, which demurrer and joinder are in the words following, to wit:

District court of the United States for the middle district of Alabama, May term, 1870.

CORNELIUS CADLE, JR., RECEIVER OF THE First National Bank of Selma,
vs.
GEORGE O. BAKER.

18 And the said defendants, by W. M. Brooks, their attorney, come and defend the wrong and injury when, &c., and say that the said declaration, and the matters and things therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendants, and they, the said defendants, are not bound by law to answer the same, and this they are ready to verify. Wherefore, by reason of the insufficiency of the said declaration, the said defendants pray judgment, and that the said plaintiff may be barred from having or maintaining his action aforesaid thereof against them, and the said defendants state and show to the court here the following causes of demurrer, that is to say:

First. That it is not shown in said declaration that the said national bank failed to redeem any of its circulating notes on the lawful demand of payment thereof during the usual hours of business at the office of said bank, or at its place of redemption, and that thereupon the holder of said notes caused the same to be protested by a notary public, or that the cashier or president of said bank offered to waive demand and notice of the protest, and admitted in writing the time of the demand, the amount demanded, and the fact of the non-payment, and it does not appear that either such admission or notice of protest was forwarded to the Comptroller of the Currency.

19 Second. It does not appear that the Comptroller of the Currency received notice that said bank failed to redeem any of its circulating notes as specified in the forty-sixth section of the act of Congress in the declaration mentioned.

Third. It does not appear that any of the circulating notes of said bank were presented and payment thereof lawfully demanded.

Fourth. It does not appear that any of the circulating notes of said bank were protested for non-payment.

Fifth. It does not appear that any special agent appointed by the Comptroller of the Currency, with the concurrence of the Secretary of

the Treasury, ascertained that said bank refused to pay its circulating notes when demanded, as provided in the forty-sixth section of said act.

Sixth. It does not appear that the Comptroller of the Currency had any authority to appoint said Cadle receiver of said bank.

Seventh. It appears that the appointment of said Cadle as receiver of said bank is void.

Eighth. It does not appear that the Comptroller of the Currency was satisfied before or at the time of the alleged appointment of said receiver that said bank had refused to pay its notes as in said act is provided, and was in default.

Ninth. It does not appear that the Comptroller of the Currency appointed any agent to ascertain whether said bank had refused to pay its circulating notes when demanded during the usual hours of
20 business at the office of said bank, or at its place of redemption.

Tenth. It does not appear that any agent, appointed by the Comptroller of the Currency, with the concurrence of the Secretary of the Treasury, reported to the said Comptroller that he, the said agent, had ascertained that said bank had failed to pay its circulating notes, or any lawful demand thereof by the holder, and that the same were protested by a notary public for non-payment, or that the president or cashier of said bank signed and delivered an admission in writing, stating the time of demand, the amount demanded, and the facts of the non-payment thereof, and that the declaration is uncertain, informal, and insufficient.

(Signed) W. M. BROOKS,
Att'y for Defendants.

And now comes the said plaintiff and joins in demurrer.

(Signed) J. P. SOUTHWORTH, *U. S. Att'y.*
CHILTON & THORINGTON,
J. C. COMPTON, *Pl'ffs' Att'ys.*

And the matter of the demurrer being considered by the court, it is ordered and adjudged by the court that the said first ground of demurrer, down to and including the words "be protested by a notary public," be allowed, and the balance of said first ground of demurrer be overruled. Also, that the second, third, fifth, seventh, ninth, and tenth grounds of demurrer, the said tenth ground to and including the words
"protested by a notary public for non-payment," be, and the
21 same are hereby, allowed, and the remainder of said grounds of demurrer are disallowed. And the plaintiff not asking leave to amend, the court gave judgment on the demurrer against the plaintiff, to which decision of the court upon the demurrer the plaintiff excepts, and tenders this his bill of exceptions, which is signed and sealed by the court in term time, and ordered to be enrolled as a part of the record in this cause.

RICHARD BUSTEED, [SEAL.]
Judge of the district courts of the United States for the State of Alabama.
June 4th, 1870.

Certificate of clerk.

UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, Elliott C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, hereby certify that the foregoing

pages, numbered respectively from one to twenty-one inclusive, contain a true, correct, and complete copy of the record, and of all the papers, exhibits, and other proceedings in the case of Cornelius Cadle, junior, receiver of the First National Bank of Selma, against George O. Baker and Company, as the same remain of record, and on file in my office as such clerk. And I further certify that the original writ of error, the citation, with its service endorsed thereon, and a copy of the bond in said entitled cause, are hereunto appended to this return.

22 In testimony whereof I have hereunto set my hand and caused the seal of said district court to be affixed at Montgomery this fourth day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth year.

[SEAL.]

E. C. V. BLAKE,
Clerk United States District Court for the Middle District of Alabama.

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the middle district of Alabama, greeting:

Because the records and proceedings, and also in the rendition of the judgment of a plea which is in the said district court, before you, between Cornelius Cadle, jr., as receiver of the First National Bank of Selma, and George O. Baker and Joseph L. Perkins, partners in trade using the firm-name of George O. Baker & Co., a manifest error hath happened, to the great damage of the said Cornelius Cadle, jr., as receiver of the First National Bank of Selma, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the fourth day of December next in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

24 Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the fifth day of December in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

E. C. V. BLAKE,
Clerk U. S. Dist. Court, Middle District Alabama.

(Indorsed:) U. S. dist. court mid. district Alabama. Cornelius Cadle, jr., rec'v'r 1st Nat'l Bank of Selma, vs. George O. Baker, Joseph L. Perkins, partners, using firm-name Geo. O. Baker & Co. Original writ of error. Filed Nov. 3d, 1871. E. C. V. Blake, clerk.

25 UNITED STATES OF AMERICA, *ss:*

To George O. Baker and Joseph L. Perkins, partners in trade, using firm-name and style of George O. Baker & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first

Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the middle district of Alabama, wherein Cornelius Cadle, jr., as receiver of the First National Bank of Selma, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard Busteed, judge of the United States district court for the districts of Alabama, this the second day of December, 1871.

RICHARD BUSTEED,
United States District Judge
for the State of Alabama.

Received in office this the 2d day of December, A. D. 1871.

E. C. V. BLAKE,
Clk U. S. Dist. Court, Mid. Dist. of Alabama.

(Indorsed:) U. S. district court mid. dist. Alabama. Cornelius Cadle, jr., rec'v'r 1st Nat'l Bank of Selma, vs. George O. Baker & Co. Original citation.

Received in office Dec. 2, 1871.

R. W. HEALY,
U. S. Marshal.

I hereby specially depute Henry Cochran to serve the within citation.

R. W. HEALY,
U. S. Marshal.

26 Executed the within citation by delivering a copy of the same personally to William M. Brooks, the attorney of record of George O. Baker & Co.

December 2d, 1871.

HENRY COCHRAN,
United States Special Deputy Marshal.

Henry Cochran being duly sworn deposeth and saith that on the 2d day of December, 1871, at Selma, Alabama, he executed the within citation by delivering a copy of the same to William M. Brooks, the attorney of record of George O. Baker & Co.

HENRY COCHRAN,
United States Special Deputy Marshal.

Sworn to & subscribed before me at Montgomery this 4th day of December, A. D. 1871.

GEO. H. PATRICK, MONTGOMERY, ALABAMA.

GEO. H. PATRICK,
U. S. Commissioner Mid. Dist. Ala.

27 *Copy of bond for costs.*

Supreme Court of the United States.

CORNELIUS CADLE, JR., AS RECEIVER OF THE First National Bank of Selma,
vs.
GEORGE O. BAKER AND JOSEPH L. PERKINS, partners in trade using the firm-name of George O. Baker & Co.

Know all men by these presents that we, Cornelius Cadle, jr., George F. Marlowe, jr., and Henry Cochran, of Selma, Alabama, are held and

firmly bound unto George O. Baker & Co., of Selma, Alabama, in the sum of three hundred dollars, to be paid to the said George O. Baker & Co., their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this second day of December, A. D. 1871.

Whereas the above-named Cornelius Cadle jr., as receiver of the First National Bank of Selma, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the United States district court for the middle district of Alabama:

Now, therefore, the condition of this obligation is such that if the above-named Cornelius Cadle, jr., as receiver of the First National Bank of Selma, shall prosecute his said writ of error to effect, and answer all costs if he fail to make good his plea, then this obliga-
28 tion shall be void; otherwise to remain in full force and virtue.

(Signed) C. CADLE, JR.
GEORGE F. MARLOWE, JR.
HENRY COCHRAN.

Sealed and delivered in the presence of—
W. J. GREENE.
H. S. D. MALLORY.

Approved by—

RICHARD BUSTEED,
United States District Judge for Alabama.

Filed December 2d, 1871.

E. C. V. BLAKE, *Clerk.*

UNITED STATES OF AMERICA,
Middle District of Alabama:

I hereby certify that the foregoing is a true, correct, and complete copy of the original bond for costs in the case of Cornelius Cadle, jr., receiver of the First National Bank of Selma, against George O. Baker & Company, as the same remains of record and on file in my office as such clerk.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed at Montgomery this 4th Dec., 1871.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist. Court, Middle Dist. Alabama.

(Indorsement on cover:) No. 530. Cornelius Cadle, jr., as receiver of the 1st National Bank of Selma, plaintiff in error, vs. George Baker and Joseph L. Perkins, as George Baker & Company. M. Alabama D. C. U. S. Filed 12th December, 1871.

Supreme Court of United States.

CORNELIUS CADLE, Receiver
v.
GEORGE BAKER & CO.
} No. 13.

Brief of P. PHILLIPS,

For Plaintiff in Error.

This is an action brought by the Receiver to recover the amount due by defendants as drawers of a certain bill of exchange, which had become the property of the First National Bank of Selma.

The declaration avers—

1. That by reason of violations of the act of 3 June, 1864, proceedings had been instituted against the bank, by the comptroller, and on the 1 June, 1867, the court had rendered a judgment, declaring that it had forfeited its franchise under the act, as appears by "the record now in court."

2. That on the 30 May, 1867, the comptroller with the concurrence of the Secretary of the Treasury, being satisfied that said bank had refused to pay its circulating notes as required by the act, appointed an agent to ascertain and report on the fact, and having received his

report, that the bank had so failed, did appoint the plaintiff as receiver of said bank.

3. That the plaintiff as such receiver, executed the requisite bond, and received his commission, which is now shown to the court.

The commission under order of the court was directed to be filed and attached to the complaint. p. 5.

Thereupon defendants filed their demurrer on the grounds—

That the declaration did not show the failure to redeem on a demand made in business hours at the office of the bank; or that the holder caused a protest; or that the officers of the bank waived a demand; or that the comptroller had notice of the fact.

That it is not shown that any agent appointed by the comptroller had ascertained the fact of failure to redeem, as provided in the 46th section.

That it does not appear that the comptroller had any authority to appoint the plaintiff receiver of the bank.

Or that he was satisfied at the time of the appointment that the bank had refused to pay its notes.

Or that any agent had been appointed to ascertain the fact. p. 6.

The commission, which is referred to in the declaration as "now here shown to the court," and filed by order of the court as part of the complaint, forms a portion of the declaration as effectually as if it had been incorporated therein, and fully answers the grounds of the demurrer.

The declaration avers that it was issued with the concurrence of the Secretary of the Treasury.

It recites that on the 23 April, 1867, Hopley, special agent of the comptroller, presented at the bank a five dollar circulating note of its issue, and demanded payment, which was refused.

That Woods, the cashier, delivered to said agent an admission in writing of the demand and non-payment.

That being satisfied from this admission, and the report thereof, that the bank had failed to redeem its bills, on demand made during the usual hours of business at its office, the comptroller in pursuance of the authority conferred by the act, appoints Cornelius Cadle, receiver, &c.

The demurrer was sustained, and the plaintiff, resting on the judgment in favor of the demurrer, brings his writ of error to reverse the same.

ASSIGNMENT OF ERROR.

The judgment sustaining the demurer is erroneous—

The parties to this suit are, on the one side, the receiver, and on the other, the drawers of a bill of exchange which had become the property of the bank.

The demurrer in behalf of the drawers, seeks to set up the absence of certain allegations in the declaration, which are supposed to be necessary to justify the action of the Government in its proceedings to wind up the affairs of the bank, and the appointment of a receiver.

This is attempted to be done in the face of the admission that by the judgment of the court, the bank had been adjudged to have forfeited its franchises by virtue of the provisions of the act.

In the proceedings in which the bank was the party defendant, it was in order to show that any of the prerequisites which authorized the condemnation had not

been complied with. This the bank failed to do, and judgment of forfeiture was rendered against it.

Three years after this judgment, a debtor of the bank seeks to resist the payment of his debt, by averring that the proceedings against the bank for the forfeiture and the appointment of a receiver, were erroneous.

We submit that the only legal inquiry in the suit between these parties is, the right of the plaintiff to *bring the suit.*

The forfeiture against the bank is *res judicata.*

The 50th section provides, that the comptroller on "becoming satisfied, *as specified in this act*, that any association has refused to pay its circulating notes as therein mentioned, and is in default, may forthwith appoint a receiver."

In the body of the declaration it is averred, that the plaintiff was appointed "a receiver as provided by the *fiftieth section* of the act;" [Improperly printed fifth section,] and further that he had executed the requisite bond, and "entered upon the duties of his office as such receiver," of which defendant had due notice before the commencement of this suit.

Now, as the 50th section authorizes the appointment when the comptroller became satisfied of the default "*as specified in this act*," the averment as it stands is the same as if it had been stated, that the appointment was made in accordance with the *provisions of the act.*

When, then, the demurrer admits the truth of such an averment, it admits the legality of the appointment.

This being established, it is only necessary to refer to the power conferred on the receiver by the law, among which is one to "collect all debts," &c. This necessarily includes the power to bring suits for the purpose.

But if it were neccessary to show more particularly the means by which the comptroller was to be satisfied of the default, in order to call into exercise the power of appointment, these will be found in the recitals of the commission, which, as heretofore stated, was referred to in the declaration and made a part thereof.

We have said that the proceedings against the bank are conclusive against these defendants, and that the regularity of the preliminary steps which led to the appointment of the receiver cannot now be called in question by them.

The law provides protection against any such irregularities or improper exercise of power by the comptroller. But this protection is for the bank, and not for its debtors. The 50th section declares that the bank "against which proceedings have been so instituted, on account of any alleged refusal to redeem, *shall deny having failed to do so*, it may, at any time within ten days after it shall have been notified of the appointment of an agent as provided for in this act, apply for an injunction to stay proceedings, and the court, after citing the comptroller, and after the decision of the court or finding of a jury that the association has not refused to redeem its notes shall make an order enjoining the comptroller., &c.

13 Stat., 115.

We thus see that the bank is authorized to challenge the action of the comptroller, but we do not see any where that such a right has been conferred on a debtor to the bank.

We therefore submit that the judgment must be reversed.

P. PHILLIPS,
For Plaintiff in Error.